

Notice of Allowability

Application No.

09/856,221

Examiner

Dr. Kailash C. Srivastava

Applicant(s)

JARRETT ET AL.

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE Filed April 5, 2004.
2. ☒ The allowed claim(s) is/are 3, 53-56, 63, 65 and 69.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 06/09/2004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT/ REASONS FOR ALLOWANCE

1. Request for continued examination (i.e., RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application on April 05, 2004 after a Final action was mailed on October 09, 2003. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action mailed 10/09/2003 has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on April 05, 2004 has been entered. Accordingly an RCE has been established and the action on RCE follows.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Patrick J. Hagan on 09 June 2004.

In the Claims:

- In each of Claims 3, 53 and 55 at Line 2, the word "obtainable" has been replaced with the word -- obtained --.
- In Claim 3 at Lines 4-5, the phrase " , said insect species being selected from the group consisting of *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*" has been deleted.
- In claim 54, at lines 2-4, the phrase "insects of two or more order selected from:

Lepidoptera, Coleoptera and Homoptera" has been replaced with -- at least one insect from two or more orders selected from the group consisting of *Lepidoptera*; *Coleoptera*; and *Homoptera* --.

- In claim 56, at lines 2-3, the phrase "insects of two or more orders" has been replaced with -- at least one insect from two or more orders selected from: *Lepidoptera, Coleoptera and Homoptera*--.
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Add new claim 69.

- --69. (New) The pesticidal agent according to claim 3, wherein said insect species is selected from the group consisting of *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*--.
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3. The following is an examiner's statement of reasons for allowance:

Replacing the word "obtainable" with word "obtained" gives definitiveness to the claims to indicate that the claimed product is indeed from the claimed microorganisms.

Applicants' Declaration filed April 05, 2004 clearly shows in a side by side comparison that in contrast to the insecticidal product taught in the prior art, obtained from an organism (i.e., *Xenorhabdus nematophilus*) of the same Genus (i.e., *Xenorhabdus*), the instantly claimed insecticidal product obtained from two different strains (i.e., H31 and I73) of *Xenorhabdus bovienni* is active against four different insect pests (i.e., *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*) but inactive against lepidopteran insect *Heliothis virescens* and dipteran mosquito pest *Aedes aegyptii*.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Claims 3, 53-56, 63, 65 and 69 are allowed.

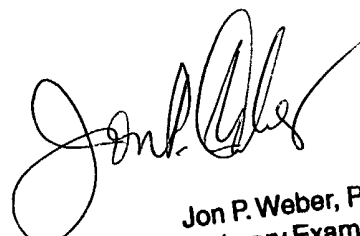
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1651
(571) 272-0923

June 09, 2004


Jon P. Weber, Ph.D.
Primary Examiner